



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 25, 1989

URGENT

OCA 2619-89

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer -

BOA FILE

Lee

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SUBJECT: Draft HFAC bill "Chemical and Biological Warfare Elimination Act."

NOTE: State has informed us that a PCC meeting may be called within the next 24 hours to discuss the attached HFAC draft bill and that HFAC may mark this up Thursday, July 27th.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than 2:00 P.M., WEDNESDAY, JULY 26, 1989.

Questions should be referred to ANNETTE ROONEY/SUE TEAU (395-7300), the legislative analyst in this office.

Ronald K. Peterson
RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosure

cc: C. Boyden Gray T. Thiele
D. Taft S. Dotson

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HLC

[DRAFT]
July 21, 1989

101ST CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. _____ introduced the following bill; which was
referred to the Committee on _____

A BILL

To control the export, to countries pursuing or expanding the ability to produce or deliver chemical or biological weapons, of items that would assist such countries in acquiring such ability, to impose sanctions against companies which have aided in the proliferation of chemical or biological weapons, to provide for sanctions against countries which use or prepare to use chemical or biological weapons in violation of international law, and for other purposes.

- 1 Be it enacted by the Senate and House of Representatives
- 2 of the United States of America in Congress assembled,

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1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Chemical and Biological
3 Warfare Elimination Act".

4 SEC. 2. FINDINGS.

5 The Congress makes the following findings and
6 declarations:

7 (1) It is a top priority to achieve a comprehensive
8 global convention, with adequate provisions for
9 verification, to prohibit the production and stockpiling
10 of chemical weapons.

11 (2) All countries should cease development,
12 production, and stockpiling of chemical weapons on a
13 verifiable basis at the earliest possible date.

14 (3) The United States should cooperate in and lead
15 multilateral efforts to stop the proliferation of
16 chemical weapons. These efforts include the negotiations
17 at the Geneva Conference on Disarmament for a worldwide
18 ban on chemical weapons, controls on proliferation of
19 chemical technology through the Australia suppliers
20 group, the Paris Conference of January 1989 on chemical
21 weapons use, and the conference on chemical weapons
22 proliferation scheduled to be held in Canberra,
23 Australia, in September 1989.

24 (4) The United States should also impose the
25 necessary controls on United States exports to prevent

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1 the proliferation of chemical and biological weapons and
2 should discourage foreign companies from transferring
3 similar items.

4 (5) The United States should work with other
5 countries or groups of countries to adopt progressively
6 stronger measures (including appropriate sanctions)
7 against countries that use chemical or biological weapons
8 in violation of international law or develop, produce, or
9 stockpile biological weapons. The President is urged to
10 pursue multilateral sanctions pursuant to United Nations
11 Security Council Resolution 602, which declared the
12 intention of the Security Council to give immediate
13 consideration to imposing "appropriate and effective"
14 sanctions against any nation which uses chemical weapons
15 in violation of international law.

16 **TITLE I--MEASURES TO PREVENT THE PROLIFERATION OF CHEMICAL**
17 **AND BIOLOGICAL WEAPONS**

18 **SEC. 101. MULTILATERAL EFFORTS.**

19 It is the policy of the United States to seek
20 multilaterally coordinated efforts with other countries to
21 control the proliferation of chemical and biological weapons.

22 **SEC. 102. EXPORT CONTROLS.**

23 (a) **IN GENERAL.**--The President shall--

24 (1) use the authorities of the Arms Export Control
25 Act to control the export of those defense articles and

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1 defense services, and

2 (2) use the authorities of the Export Administration
3 Act of 1979 to control the export of those goods and
4 technologies,

5 that the President determines would assist a country in
6 acquiring the capability to develop, produce, stockpile,
7 deliver, or use chemical or biological weapons.

8 (b) EXPORT ADMINISTRATION ACT.--Section 6 of the Export
9 Administration Act of 1979 (50 U.S.C. App. 2405) is amended
10 by adding at the end the following:

11 "(q) CHEMICAL AND BIOLOGICAL WEAPONS.--(1) A validated
12 license shall be required under this section for the export
13 of any goods or technology that the President determines
14 would assist a country in acquiring the capability to
15 develop, produce, stockpile, deliver, or use chemical or
16 biological weapons, unless the destination of such export is
17 a country with whose government the United States has entered
18 into bilateral or multilateral arrangements for the control
19 of chemical or biological weapons related goods or
20 technology.

21 "(2) The provisions of subsections (b), (c), (d), (e),
22 (g), (h), and (m) of this section shall not apply to any
23 controls imposed under this Act pursuant to multilaterally
24 agreed arrangements for controlling the proliferation of
25 chemical or biological weapons."

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1 SEC. 103. SANCTIONS AGAINST CERTAIN FOREIGN PERSONS.

2 (a) DETERMINATION BY THE PRESIDENT.--

3 (1) IMPOSITION OF SANCTIONS.--The President, subject
4 to subsection (c), shall impose on a foreign person, for
5 a period of not less than 2 years, either or both of the
6 sanctions under subsection (b) if the President
7 determines that the foreign person, on or after the date
8 of the enactment of this Act, has knowingly and
9 substantially contributed to the efforts to use, develop,
10 produce, stockpile, or otherwise acquire chemical or
11 biological weapons by any country that the President has
12 determined has, on or after such date of enactment,
13 either used chemical or biological weapons in violation
14 of international law or is making substantial
15 preparations to do so.

16 (2) CONSULTATIONS WITH AND ACTIONS BY GOVERNMENT OF
17 JURISDICTION.--Sanctions shall be imposed under paragraph
18 (1) on a foreign person only after the President has
19 consulted with the government with primary jurisdiction
20 over that foreign person, and such sanctions shall not be
21 imposed if the President has determined that such
22 government has taken adequate corrective action with
23 respect to the acts by that foreign person.

24 (3) REPORT TO CONGRESS.--The President shall report
25 to the Congress, not later than 30 days after making a

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1 determination under paragraph (1), on the status of
2 consultations with the appropriate government under
3 paragraph (2).

4 (b) SANCTIONS.--The sanctions to be imposed pursuant to
5 subsection (a) are the following:

6 (1) PROCUREMENT SANCTION.--The United States
7 Government shall not procure, or enter into any contract
8 for the procurement of, any goods or services from any
9 foreign person referred to in subsection (a)(1).

10 (2) IMPORT SANCTIONS.--The importation into the
11 United States of products produced by a foreign person
12 referred to in subsection (a)(1) is prohibited.

13 (3) TERMINATION OF SANCTIONS.--(A) A sanction imposed
14 on a foreign person under this section shall cease to
15 apply to that foreign person if the President determines
16 and certifies to the Congress that there is reliable
17 evidence that the foreign person has ceased all
18 activities described in subsection (a)(1).

19 (c) EXCEPTION.--The President shall not apply sanctions
20 under this section if the President determines that the
21 imposition of the sanctions would result in the inability to
22 meet vital defense or humanitarian needs of the United
23 States.

24 (d) WAIVER.--The President may waive the application of
25 subsections (a) and (b) to a foreign person if the President

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1 determines that such waiver is important to the national
2 security of the United States.

3 (e) REPORTS TO CONGRESS.--The President shall report to
4 the Congress on all determinations made under this section.

5 (f) DEFINITION.--For purposes of this section, the term
6 "foreign person" means--

7 (1) an individual who is not a citizen of the United
8 States or an alien admitted for permanent residence to
9 the United States; or

10 (2) a corporation, partnership, or other entity which
11 is created or organized under the laws of a foreign a
12 country or which has its principal place of business
13 located outside the United States.

14 SEC. 104. JUDICIAL REVIEW.

15 Any determination by the President under section 102
16 (including section 6(q) of the Export Administration Act of
17 1979), or section 103, and the imposition of any control or
18 sanction under section 102 (including section 6(q) of the
19 Export Administration Act of 1979) or section 103, shall not
20 be subject to judicial review.

21 TITLE II--MEASURES TO DETER THE USE OF CHEMICAL OR BIOLOGICAL 22 WEAPONS

23 SEC. 201. PRESIDENTIAL DETERMINATION CONCERNING CERTAIN 24 COUNTRIES.

25 The President shall determine whether any foreign country

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1 has, on or after the date of the enactment of this Act--

2 (1) used chemical or biological weapons in violation
3 of international law;

4 (2) made substantial preparations to use chemical
5 weapons; or

6 (3) developed, produced, or stockpiled biological
7 weapons in violation of international law.

8 SEC. 202. SANCTIONS AGAINST USE OF CHEMICAL OR BIOLOGICAL
9 WEAPONS IN VIOLATION OF INTERNATIONAL LAW.

10 (a) SANCTIONS.--If, at any time, the President determines
11 that a country has engaged in activities described in section
12 201(1), the President shall forthwith impose the sanctions
13 set forth in at least 3 of the following paragraphs:

14 (1) PROHIBITION ON ARMS SALES.--The United States
15 Government shall not, under the Arms Export Control Act,
16 sell to that country any item on the United States
17 Munitions List, or issue any license for the export to
18 that country of any item on the United States Munitions
19 List.

20 (2) EXPORTS OF NATIONAL SECURITY-SENSITIVE GOODS AND
21 TECHNOLOGY.--The authorities of section 6 of the Export
22 Administration Act of 1979 shall be used to prohibit the
23 export to that country of any goods or technology on that
24 part of the control list established pursuant to section
25 5(c)(1) of that Act.

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1 (3) FURTHER EXPORT RESTRICTIONS.--The authorities of
2 section 6 of the Export Administration Act of 1979 shall
3 be used to prohibit or otherwise substantially restrict
4 exports to that country of goods and technology
5 (excluding agricultural commodities and products).

6 (4) IMPORT RESTRICTIONS.--Restrictions shall be
7 imposed on the importation into the United States of
8 articles (which may include petroleum or any petroleum
9 product) that are the growth, product, or manufacture of
10 that country.

11 (5) FOREIGN ASSISTANCE.--No assistance shall be
12 provided to that country under the Foreign Assistance Act
13 of 1961 or the Arms Export Control Act other than
14 assistance which is intended to benefit the people of
15 such country directly and is not channeled through
16 governmental agencies or entities of such country.

17 (6) MULTILATERAL DEVELOPMENT BANK ASSISTANCE.--The
18 United States shall oppose any loan or financial or
19 technical assistance to that country by international
20 financial institutions in accordance with section 701 of
21 the International Financial Institutions Act (22 U.S.C.
22 262d).

23 (7) DENIAL OF CREDIT OR OTHER FINANCIAL
24 ASSISTANCE.--The United States shall deny to that country
25 any credit or financial assistance by any department,

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1 agency, or instrumentality of the United States
2 Government.

3 (b) DIPLOMATIC RELATIONS.--The President shall use
4 his constitutional authorities to downgrade or suspend
5 diplomatic relations between the United States and the
6 country.

7 (b) DETERMINATION TO BE REPORTED TO CONGRESS.--Any
8 determination under subsection (a) shall be reported promptly
9 to the Congress.

10 (c) ADDITIONAL SANCTIONS IF CERTAIN CONDITIONS NOT
11 MET.--Unless, within 3 months after making a determination
12 under subsection (a) with respect to a country, the President
13 determines and certifies in writing to the Congress--

14 (1) that such country is no longer conducting any
15 activity described in section 201(1),

16 (2) that the government of such country has provided
17 reliable assurances that the country will not in the
18 future conduct any activity described in section 201(1),
19 and

20 (3) that--

21 (A) such government is willing to allow on-site
22 inspections by United Nations observers or other
23 internationally recognized, impartial observers, or

24 (B) other reliable means exist,
25 to ensure that the country is not using chemical or

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1 biological weapons in violation of international law,
2 then the President, after consultation with the Congress,
3 shall impose on that country at least 1 sanction set forth in
4 paragraphs (1) through (8) of subsection (a) which has not
5 previously been imposed on that country pursuant to
6 subsection (a).

7 (d) CONDITIONS FOR LIFTING SANCTIONS.--The President may
8 terminate any sanction imposed on a country pursuant to
9 subsection (a) or (c) if the President determines and so
10 certifies in writing to the Congress--

11 (1) that the country is no longer conducting any
12 activity described in section 201(1), and

13 (2) that the conditions described in paragraphs (2)
14 and (3) of subsection (c) have been met.

15 (e) WAIVER AND REPORT.--

16 (1) PRESIDENTIAL WAIVER.--The President may waive the
17 imposition of sanctions under this section if the
18 President determines that imposing such sanctions would
19 result in a direct threat to the security of the United
20 States.

21 (2) REPORT.--In the event the President decides to
22 apply the waiver described in paragraph (1), the
23 President shall so notify the Congress not less than 20
24 days before the waiver takes effect. Such notification
25 shall include a report fully articulating the rationale

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1 and circumstances which led the President to apply the
2 waiver.

3 SEC. 203. SANCTIONS AGAINST OTHER VIOLATIONS OF INTERNATIONAL
4 LAW WITH RESPECT TO CHEMICAL OR BIOLOGICAL
5 WEAPONS.

6 (a) SANCTIONS.--If, at any time, the President determines
7 that a country has engaged in activities described in section
8 201(2) or (3), the President may impose any sanction
9 described in section 202(a).

10 (b) IMPOSITION OF SANCTIONS TO BE REPORTED TO
11 CONGRESS.--The President shall report promptly to the
12 Congress the imposition of any sanction under subsection (a).
13 SEC. 204. CONTRACT SANCTITY.

14 In imposing any sanction under this title, the President
15 may not prohibit or curtail any transaction--

16 (1) in performance of any contract or agreement
17 entered into before the date on which the President
18 reports to the Congress the imposition of the sanction,
19 or

20 (2) under a validated license or other authorization
21 issued under the Export Administration Act of 1979 or
22 other provision of law,
23 unless and until the President determines and certifies to
24 the Congress that--

25 (A) a breach of the peace poses a serious and direct

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- 1 threat to the strategic interest of the United States,
2 (B) the prohibition or curtailment of such contracts,
3 agreements, licenses, or authorizations will be
4 instrumental in remedying the situation posing the direct
5 threat, and
6 (C) the sanction will continue only so long as the
7 direct threat persists.

8 TITLE III--MISCELLANEOUS PROVISIONS

9 SEC. 301. PRESIDENTIAL REPORTING REQUIREMENTS.

10 (a) REPORTS TO CONGRESS.--Not later than 90 days after
11 the date of the enactment of this Act, and every 12 months
12 thereafter, the President shall transmit to the Speaker of
13 the House of Representatives and the President pro tempore of
14 the Senate a report which shall include--

15 (1) a description of the actions taken to carry out
16 this Act and the amendment made by section 102(b) of this
17 Act;

18 (2) a description of the efforts of all foreign
19 countries to acquire equipment, materials, or technology
20 to develop, produce, or use chemical or biological
21 weapons, together with an assessment of the current and
22 likely future capabilities of such countries to develop,
23 produce, or use such weapons;

24 (3) a description of the use of chemical weapons in
25 violation of international law, of substantial

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1 preparations to do so, and of the development,
2 production, stockpiling, or use of biological weapons by
3 foreign countries; and

4 (4) a description of the extent to which foreign
5 persons or governments have knowingly and substantially
6 contributed assisted third countries to acquire
7 equipment, material, or technology intended to develop,
8 produce, or use chemical or biological weapons.

9 (b) PROTECTION OF CLASSIFIED INFORMATION.--To the extent
10 practicable, reports submitted pursuant to subsection (a) or
11 section 103(a)(3), 103(e), or 202(e)(2) should be based on
12 unclassified information. Portions of such reports may be
13 classified.